

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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JOSEPH T. TOY,

Plaintiff,

v.

STATE OF NEVADA, et al.,

Defendants.

Case No. 2:14-cv-01721-JCM-PAL

REPORT OF FINDINGS AND
RECOMMENDATION

(IFP App – Dkt. #1)

Plaintiff Joseph T. Toy is proceeding in this action pro se. Plaintiff has requested authority pursuant to 28 U.S.C. § 1915 to proceed in forma pauperis, and he submitted a complaint. This matter was referred to the undersigned pursuant to the provisions of 28 U.S.C. § 636(b)(1)(A) and (B) and Local Rules IB 1-3 and 1-4.

I. In Forma Pauperis Application (Dkt. #1).

Plaintiff has submitted the affidavit required by § 1915(a) showing that he is unable to prepay fees and costs or give security for them. Accordingly, his request to proceed in forma pauperis will be granted pursuant to 28 U.S.C. § 1915(a). The court will now review Plaintiff's complaint.

II. Screening the Complaint

Upon granting a request to proceed in forma pauperis, a court must additionally screen a complaint pursuant to § 1915(a). Federal courts are given the authority to dismiss a case if the action is legally "frivolous or malicious," fails to state a claim upon which relief may be granted, or seeks monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2). When a court dismisses a complaint under § 1915(a), the plaintiff should be given leave to amend the complaint with directions as to curing its deficiencies, unless it is clear from

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1 the face of the complaint that the deficiencies could not be cured by amendment. *See Cato v.*
2 *United States*, 70 F.3d 1103, 1106 (9th Cir. 1995).

3 Rule 12(b)(6) of the Federal Rules of Civil Procedure provides for dismissal of a
4 complaint for failure to state a claim upon which relief can be granted. Review under Rule
5 12(b)(6) is essentially a ruling on a question of law. *See Chappel v. Laboratory Corp. of*
6 *America*, 232 F.3d 719, 723 (9th Cir. 2000). A properly pled complaint must provide a short and
7 plain statement of the claim showing that the pleader is entitled to relief.” Fed. R. Civ. P.
8 8(a)(2); *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007). Although Rule 8 does not
9 require detailed factual allegations, it demands “more than labels and conclusions” or a
10 “formulaic recitation of the elements of a cause of action.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678
11 (2009) (citing *Papasan v. Allain*, 478 U.S. 265, 286 (1986)). The court must accept as true all
12 well-pled factual allegations contained in the complaint, but the same requirement does not apply
13 to legal conclusions. *Id.* Mere recitals of the elements of a cause of action, supported only by
14 conclusory allegations, do not suffice. *Id.* at 679-80. Secondly, where the claims in the
15 complaint have not crossed the line from plausible to conceivable, the complaint should be
16 dismissed. *Twombly*, 550 U.S. at 570.

17 This is one of 4 applications and attached complaints Plaintiff filed between October 16
18 and 17, 2014 related to his mother’s treatment by state and local authorities. This complaint
19 alleges claims concerning Plaintiff’s mother, Mrs. Doris Cecila Toy against the State of Nevada,
20 Clark County, Las Vegas Metropolitan Police Department and unnamed officers and personnel,
21 and the Clark County District Attorney’s Office. Although the allegations are difficult to follow,
22 it appears that Plaintiff claims he was arrested and threatened with prosecuted for holding his
23 mother against her will and/or abuse. Plaintiff contends the police’s conduct is evidence of a
24 conspiracy against him and his mother, and that the District Attorney’s Office was complicit in
25 the scheme, causing Plaintiff’s mother’s imprisonment and shortened her life. It appears the
26 District Attorney charged Plaintiff with some offense and “threatened to refile” or have Plaintiff
27 arrested if he tried to visit his mother. He alleges he was falsely charged in a conspiracy between
28 the police department and the District Attorneys’ Office.

1 He asserts that his mother and father “received police brutality money” in June of 1984,
2 but he did not although he was also a victim. The lawyer who represented his parents failed to
3 redress his rights, went on to work for the police and no longer takes police brutality cases. He
4 believes his current claims are part of a 30 year multi state history of police brutality.

5 Plaintiff has not stated a claim upon which relief can be granted. The court concludes
6 that this case is frivolous because the allegations in the complaint lack an arguable basis in law
7 and fact. *Neitzke v. Williams*, 490 U.S. 319, 325 (1989). A finding of frivolousness is warranted
8 where the facts alleged are “clearly baseless.” *Denton v. Hernandez*, 504 U.S. 25, 32 (1992); *see*
9 *also Ashcroft v. Iqbal*, 556 U.S. at 678. A court must not dismiss a complaint simply because the
10 set of facts presented by the plaintiff appears to be unlikely; however, a complaint must allege
11 facts “to state a claim that is plausible on its face.” *Twombly*, 550 U.S. at 570. Plaintiff has not
12 set forth any specific claim in the Complaint, nor has he named any particular defendant, or
13 stated when any of this alleged conduct occurred. Because Plaintiff’s Complaint does not set
14 forth a plausible claim, it is recommended that it be dismissed with prejudice.

15 Leave to amend will not be granted because Plaintiff’s claims cannot be cured by the
16 allegation of additional facts. *See Lopez v. Smith*, 203 F.3d 1122, 1126, 1131 (9th Cir. 2000) (en
17 banc) (citing *Doe v. United States*, 58 F.3d 494, 497 (9th Cir. 1995) (leave to amend should be
18 granted unless amendment would be futile)).

19 Accordingly,

20 **IT IS ORDERED:**

- 21 1. Plaintiff’s request to proceed in forma pauperis is GRANTED. Plaintiff shall not
22 be required to pay the filing fee of four hundred dollars.
 - 23 2. Plaintiff is permitted to maintain this action to conclusion without the necessity of
24 prepayment of any additional fees or costs or the giving of a security therefor.
25 This Order granting leave to proceed in forma pauperis shall not extend to the
26 issuance of subpoenas at government expense.
 - 27 3. The Clerk of Court shall file the Complaint.
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